

1 BARRY J. PORTMAN
Federal Public Defender
2 GEOFFREY A. HANSEN
Chief Assistant Federal Public Defender
3 19th Floor Federal Building – Box 36106
450 Golden Gate Avenue
4 San Francisco, CA 94102
Telephone: (415) 436-7700
5

6 Counsel for Defendant WHITFIELD
7
8

9 IN THE UNITED STATES DISTRICT COURT
10 FOR THE NORTHERN DISTRICT OF CALIFORNIA

| | | |
|------------------------------|---|--|
| 11 UNITED STATES OF AMERICA, |) | No. CR 07 - 366 VRW |
| |) | |
| 12 Plaintiff, |) | |
| |) | DEFENDANT’S SENTENCING |
| 13 vs. |) | MEMORANDUM |
| |) | |
| 14 MARCUS WHITFIELD, |) | Sentencing Date: March 20, 2008 at 1:30 p.m. |
| |) | |
| 15 Defendant. |) | |
| 16 _____ |) | |

17
18 As this Court knows from reading the presentence report, Marcus Whitfield stands before
19 the Court to be sentenced for possessing a firearm after having been convicted of a felony. The
20 Court further knows from both the hearing on the motion to suppress and the presentence report
21 that the facts leading up to Mr. Whitfield’s possession of this weapon are essentially undisputed;
22 Marcus was dating a woman, Cavia Daniels, who lived in Marin County with her two young
23 children. A few weeks before the incident at issue in this case, Ms. Daniels was the victim of an
24 attempted sexual assault in the apartment complex where she and Marcus lived, and she told
25 Marcus that she wanted him to help her get a gun for her own protection; as she later told police,
26 “the only reason Whitfield had the gun was because she encouraged him to buy it for protection.”

1 Although Mr. Whitfield attempted to dissuade her from obtaining a gun, he eventually gave in to
2 her demands and agreed to help her trade her car for a gun and ammunition. Mr. Whitfield
3 obtained the gun close to his mother's home in the Sunnydale projects in San Francisco, and he
4 took it to his mother's home to store it until Ms. Daniels could take it back to Marin County.
5 The gun stayed in his mother's home for about a week, because Ms. Daniels did not want to
6 move it while her children were in the car, and virtually every time she came to San Francisco
7 her children were with her.

8 On April 28, 2007, Daniels and Marcus had a fight while they were visiting Marcus's
9 mother, and Ms. Daniels decided to flag down a police officer to report the fight. At that time
10 she told the police that Marcus had a gun in his room at his mother's house. The room was later
11 searched, and the gun was discovered.

12 These facts all indicate that Mr. Whitfield's possession of the gun was essentially the
13 result of his girlfriend's insistence, and that fact can and should be taken into consideration when
14 determining what punishment Mr. Whitfield should receive for his crime. More importantly,
15 there are other mitigating facts in this case which place it in a different posture than many if not
16 most of the cases which come before this Court.

17 The young man who stands before the Court is the product of one of the saddest family
18 histories imaginable. Marcus grew up in the projects, surrounded by gang and narcotic activity.
19 At age two, he was brought to the attention of authorities because his mother had either
20 accidentally or intentionally given him clonidine, a pill often taken by individuals addicted to
21 drugs who cannot sleep. At some point not long thereafter, Mr. Whitfield's father abandoned the
22 family, leaving Marcus to be raised by his mother, who was addicted to crack cocaine. Marcus's
23 mother took out her frustrations in life on Marcus, and starting at age six she began to severely
24 beat him multiple times each week. The beatings lasted until Marcus was 12 years old. At age 9,
25 he was hospitalized at Langley Porter Psychiatric Institute and was diagnosed as having Post
26 Traumatic Stress Disorder, Adjustment Disorder, and possible Attention Deficit Hyperactivity

1 Disorder. The doctors at Langley Porter found evidence that Marcus had been the victim of
2 serious physical abuse, and had either been exposed to considerable adult sexual activity or had
3 been sexually abused himself, probably by one of his mother's boyfriends.

4 By age 13, Marcus was using marijuana and alcohol, and by 14 he was using marijuana
5 on a daily basis. He was soon in trouble with the law, and over the next seven years spent time in
6 and out of the California Youth Authority.

7 Despite this horrific background, there are some bright spots in Mr. Whitfield's life
8 which suggest that he is a person who is salvageable and who holds out the prospect of making a
9 good and productive life for himself. Although there are many indications that Mr. Whitfield has
10 substantial learning disabilities, he obtained his GED while he was in CYA. When he was
11 released in November 2006, Mr. Whitfield took it upon himself to do two things: he started to
12 work in a community training project to learn a skill which would make him employable, and he
13 began to work with his younger siblings in an effort to keep them from following in his footsteps.

14 Specifically, in January 2007 Marcus enrolled in Project PROUD, a program run by the
15 Young Community Developers to teach job skills to troubled youth. He attended that program
16 every day for over four months, until he was arrested on this offense in April 2007. During the
17 time he was in PROUD, he went a long way towards learning carpentry, elevator repair, and
18 irrigation repair.

19 Also during this time, Mr. Whitfield would spend many of his afternoons with his
20 younger brother Deion, and his younger sisters Donecia and Renee. Because Marcus's mother
21 remains addicted to crack, these children have spent much of their lives alone trying to care for
22 themselves, just as Marcus did. The Court might recall, for example, that the officers who
23 searched Marcus's mother's home reported that on the day of the search, Donecia (who was 14 at
24 the time and is also developmentally disabled) was home alone and could not tell officers where
25 her mother was, how she could be reached, or when she would return. In an effort to break the
26 cycle, Marcus has spent long hours caring for his brothers and sisters and has tried to help them

1 stay in school and keep up with their studies. He has, in essence, become the parent for his
2 siblings.

3 The tragedy of this case is that all of the progress Marcus was making in his life came to a
4 screeching halt when he was arrested for this offense – an offense he neither initiated nor was
5 comfortable participating in. This is not to say that Marcus does not realize that what he did was
6 wrong; he knows full well that he had no business obtaining the gun for his girlfriend, and he
7 takes full responsibility for his actions. But this case is different than most, and it would be a
8 greater tragedy if the progress which Marcus has made is thrown away because of this incident.

9 Under § 3553(a), this Court may consider the nature of the offense, the background and
10 history of the defendant, the need for just punishment and deterrence, and any other factors which
11 bear on the issue of what would be a just and fair sentence.

12 Mr. Whitfield has been in custody in county jail for almost a year. He has been
13 punished for his crime, and sadly any substantial additional jail time serves little purpose and
14 would be largely counterproductive. What needs to be done is to get Mr. Whitfield into a stable
15 living environment with vocational and other training so that he can perfect the living skills
16 which will make him a productive member of society.

17 Counsel has talked to Mr. Whitfield's aunt, Janice Whitfield, who lives in San Jose. She
18 has worked at the Agnews Developmental Center for the developmentally disabled for the last
19 seven years. She has agreed to take Marcus into her home when he is released from jail, and to
20 provide him with a stable family environment should this Court eventually release him into her
21 care and custody. While there, he could participate in both mental health counseling and job
22 training to give him life skills necessary for him to live on his own.

23 The defendant has entered into an agreement which allows him only to argue for a
24 sentence at the low end of the guideline range. Because this case presents unusual and
25 sympathetic facts, such a sentence is certainly appropriate. Whatever jail sentence this Court
26 imposes, conditions of supervised release should include mental health counseling, job training,

1 and community service. All of these conditions would assist Mr. Whitfield in picking up where
2 he left off a year ago, and would give him a fighting chance to make it in life.

3
4
5 Dated: March 13, 2008

6 Respectfully submitted,

7 BARRY J. PORTMAN
8 Federal Public Defender

9 /s/

10 GEOFFREY A. HANSEN
11 Chief Assistant Federal Public Defender
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26